IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1544 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAKESH RASIKBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR RJ OZA for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2007

ORAL JUDGMENT

Rule. Shri Mengdey, ld. APP waives service of rule on behalf of the respondent State. With the consent of parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner, - original complainant of M.Case No.1/03 registered with Vidhyanagar Police Station has prayed for an appropriate order declaring the act of omission of the respondents in the matter of charge sheet/ final report of investigation of crime in pursuance to M.Case No.1/03 filed at Vidhyanagar Police Station on 9-5-03 to be illegal. It is also further prayed to direct the respondents to transfer the investigation of M.Case No.1/03 filed at Vidhyanagar Police Station to CBI or any other independent investigating agency and/or Special Economic Cell.

3. It is the contention of the petitioner, - original complainant that the petitioner has filed one private complaint on 9-5-2003 in the Court of ld. JMFC, Anand against the Chairman and other Directors of Karamsad Urban Cooperative Bank Ltd., Karamsad for the offence u/s 409, 465, 467, 468, 420 and 120-B of the IPC alleging inter alia that misappropriation, mismanagement and irregularities in the conduct of advances / loans / finances to various persons named in the complaint. The learned J.M.F.C., sent the said complaint to the P.I., N.C.B., Anand for inquiry / investigation under Section 156(3) of the Criminal Procedure Code and directed the Investigating Officer to submit the report within 30 days. It is submitted that the said complaint / FIR was registered as M.Case No. 1 of 2003 by the Vidhyanagar Police Station and thereafter, time and again, the

Investigating Officer prayed for extension of time to submit the report and the last extension was granted by the learned J.M.F.C. by order 17.09.2004 for further period of 30 days. It is the contention on behalf of the petitioner that thereafter, neither there is any application for extension of time nor the investigation is completed. It is submitted that because of misappropriation, mismanagement and irregularities by the Officers of the aforesaid Bank, the Bank has gone into liquidation and inspite of that investigation is not completed though more than four years have passed and even the report is also not submitted. Hence, the petitioner has preferred the present application for aforesaid reliefs.

4. Pursuant to the notice issued by this Court, Shri Mengdey, ld. APP has appeared on behalf of the respondent and has produced the report submitted by the present Investigating Officer Shri BJ Pathan, Police Inspector, Economic Cell, Anand pointing out the investigation so far carried out by the Investigating Officer. It is submitted that the investigation of the same case is with the present Investigating Officer since 25-12-04 and looking to the complex questions and the accounts etc., thorough investigation by the expert is required and therefore, it has taken time to complete the investigation.

5. Shri RJ Oza, learned advocate appearing on behalf of the petitioner has submitted that it is high time that even more than 4 years have passed,

the investigation has not been completed and appropriate report has not been submitted to the concerned Magistrate. It is submitted that even as per the present Investigating Officer, looking to the complex questions legal as well as relating to account etc., the investigation is to be carried out by an expert and/or Special Economic Cell, CID Crimes which is specially meant for such type of criminal case/complaint relating to banking scam etc. and therefore, it is requested to transfer the investigation to Economic Cell, CID Crime.

6. Heard the learned advocates appearing on behalf of the parties.

7. At the outset, it is required to be noted that the criminal complaint has been filed against the accused persons, office bearers in management and officers of the Karamsad Urban Cooperative Bank Ltd., Karamsad for the offence u/s 409, 465, 467, 468, 420 and 120-B of the IPC in the year 2003 and the ld. Magistrate has passed an order directing the Police Inspector, NCB Anand for inquiry / investigation under Section 156(3) of the Criminal Procedure Code within 30 days and the last extension granted by the ld. JMFC by order dated 17-9-04 for a further period of 30 days and it appears that even thereafter, there is no extension sought by the Investigating Officer. The allegations against the accused persons are with respect to misappropriation, mismanagement, irregularities and illegalities in conduct of running the Bank and it is alleged that because of

misappropriation, mismanagement and irregularities by the Officer bearers and Officers of the aforesaid Bank, the Bank has gone into liquidation and inspite of that, the investigation is not completed though more than four years have passed and even the report is not submitted by the Investigating Officer. Even, on considering the report submitted by the present Investigating Officer, which is perused by this Court, even as per the present Investigating Officer, there are complex questions legal as well as relating to finance, accounts, banking etc, for which assistance of an expert having knowledge of banking is required. Thus, it appears that the present Investigating Officer himself is facing some difficulty in investigation in absence of any assistance by a person having special knowledge of banking etc. It is required to be noted that even the Economic Cell, Anand is also closed at present. It is reported that there is a Special Economic Cell in CID Crimes which is for investigation of the cases like the present on hand i.e. relating to banking financial scam etc. and in the facts and circumstances of the case, more particularly, when the investigation has not been completed even after a period of four years, it will be appropriate that the investigation of the complaint in question be transferred to the Economic Cell, CID Crimes, so as to see that the investigation is completed as early as possible and truth may come out and the real culprits are napped and they are punished.

8. For the reasons stated above, the petition succeeds. The investigation of complaint being M.Case No.1/03 registered with Vidhyanagar Police Station is directed to be transferred to Economic Cell, CID Crimes and the Economic Cell, CID Crimes is directed to investigate the said complaint and complete the investigation as early as possible, preferably within a period of six months from the date of receipt of this order and submit the report/charge sheet before the appropriate Court. Rule made absolute. DS permitted.

(M.R. Shah, J.)

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